TITLE 326 AIR POLLUTION CONTROL BOARD
#03-67(APCB)

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from September 1, 2003, through October 1, 2003, on IDEM's draft rule language. IDEM received comments from the following parties:

ALCOA Warrick Operations (ALCOA)
American Electric Power (AEP)
CASE Coalition (CASE)
Cinergy Power Generation Services, LLC (CPG)
Citizens Action Coalition of Indiana (CAC)
DaimlerChrysler Corporation (DCC)
Dominion (DOM)
Eli Lilly and Company (ELC)
Hoosier Environmental Council (HEC)
Indiana Cast Metals Association (INCMA)
National Starch & Chemical (NSC)
Northern Indiana Public Service Company (NIPSCO)
Partners for Pollution Prevention (PPP)
Save the Dunes Council (SDC)
Save the Valley (STV)
Trinity Consultants (TRI)
Valley Watch, Inc. (VWI)

Following is a summary of the comments received and IDEM's responses thereto.

General Rulemaking Comments

Rulemaking effort

Comment: We strongly support IDEM's efforts to adopt improvements to the NSR regulations consistent with the federal rules and in an expeditious manner. We support IDEM's statement that the rule will not have detrimental effects on Indiana's air quality. We urge IDEM to go further and recognize that the rule is expected to have beneficial effects in reducing air emissions through implementation of the clean unit test, PALs, and pollution control project exclusions as well as the

actual-to-projected-actual emissions test. IDEM should adopt all elements of the federal rule. (CASE)

Comment: We strongly support IDEM's efforts to adopt improvements to the NSR regulations consistent with the federal rules and in an expeditious manner. We support IDEM's statement that the rule will not have detrimental effects on Indiana's air quality. (ALCOA)

Comment: We appreciate the efforts of the Office Air Quality to promulgate the federal NSR reform rules as quickly as possible. In addition, we generally support IDEM's direction of adopting the federal rules with few differences. (ELC)

Comment: We support IDEM's efforts to implement the federal reforms. We urge IDEM to expeditiously approve these rules and submit the revised rules as state implementation plan (SIP) revisions. (DOM)

Comment: We support IDEM's initiative to expeditiously incorporate the revisions to the U.S. EPA rules into the state regulations in an essentially unchanged fashion, except for those cases where existing state requirements necessitate the U.S. EPA NSR rules be structured to avoid anti-backsliding concerns. (AEP)

Comment: We support the December 2002 final rule, as well as IDEM's efforts to expeditiously revise its state implementation plan. (DCC)

Response: IDEM acknowledges the support and intends to proceed with the rulemaking expeditiously.

Comment: The rules should be incorporated by reference with a few issues dealt with through separate rulemakings if needed. We are concerned that straying from the identified requirements of the federal rule will result in a significant delay in the adoption and implementation of these reforms. There is no clear guidance from U.S. EPA regarding the latitude states have to stray from the specific provisions of the federal rule. Implementation of these reforms may be significantly delayed if U.S. EPA will not approve the rules. We support a two-phase approach: adoption of the federal rule without modification to insure federal approval, followed by adoption of any modifications believed to enhance the rule. (INCMA)

Response: IDEM is working with U.S. EPA to assure the revised rules can be approved into the SIP. U.S. EPA has informally commented on the second notice, and IDEM has revised the language to address U.S. EPA concerns. U.S. EPA, Region V also sent the language to U.S. EPA Headquarters, since Indiana is one of the first states to submit revised rule language. Due to the extensive federal review prior to finalizing this rule, IDEM does not believe the state level changes will slow down the SIP approval process.

Comment: We believe it is premature for IDEM to proceed with this rulemaking because the Bush administration's NSR rollbacks are being challenged in court. If the litigation challenging the federal rollbacks is successful, Indiana residents would receive less protection than under the current rules until the current rules could be restored. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM is monitoring the legal challenge. If the legal challenge results in changes to the federal rule prior to final adoption, IDEM will consider those changes in the state rulemaking. The December 31, 2002 federal rule revisions require states with SIP approved major NSR programs to submit SIP revisions to U.S. EPA by January 2, 2006. IDEM must continue moving forward with this rulemaking to assure compliance with that requirement.

Conformity between federal and state NSR rules

Comment: Significant variations between state and federal NSR regulations, and among various state programs, are problematic for efficient business planning, particularly for a company with operations in many states. Variations create potential confusion for the public who will not be able to rely on one set of rules. If the state NSR rules are different, there would be delays and possible confusion when using any U.S. EPA guidance on the new NSR reform rules. Interstate differences with NSR will create an uneven set of requirements and may affect important company decisions related to manufacturing capacity and ultimately the location of jobs in the U.S. We support uniformity in regulations at the state and federal levels to the maximum possible extent. We recommend that IDEM adopt rules that are consistent with the federal rules unless the differences are clearly justified by environmental reasons unique to Indiana. (DCC)

Response: Consistency in air permit regulations is important. Indiana has proposed to adopt all of the federal provisions with a few revisions to prevent backsliding of air quality. While there is consistency in major NSR programs, there is not consistency in the various minor NSR programs. Because the new major NSR provisions rely heavily on state and local minor programs, some variation is likely to occur. IDEM anticipates developing training materials for NSR to clarify the changes to the program.

Equipment replacement provision

Comment: We encourage IDEM to revise this proposal to include the elements of the Routine Maintenance Repair and Replacement rule revisions to the NSR program signed by U.S. EPA Administrator Horinko on August 27, 2003 within this rulemaking instead of placing them in a separate rulemaking that will lag this rulemaking by only a few months. We believe it would be efficient for IDEM to make those changes prior to taking this revision to the APCB in February 2004. We encourage IDEM to make those changes at this time and not wait. We do not believe the expense and time required for an additional rulemaking is justified. (AEP)

Comment: The rules as proposed are only based on the language of the final U.S. EPA NSR reform rule of December 31, 2002 and additional IDEM modifications. An integral part of the NSR reform effort includes the revisions and clarifications provided to the regulated community for routine maintenance, repair and replacement by the August 27, 2003 final U.S. EPA rule. This RMRR rule

must be included in the IDEM rule as expeditiously as possible to provide the affected parties with the regulatory reforms needed to operate efficiently. We recommend IDEM include the provisions of the RMRR rule, as signed by the acting U.S. EPA administrator on August 27, 2003, in this rulemaking. (NIPSCO)

Comment: We encourage IDEM to incorporate by reference the language from the signed version of the amendments to 40 CFR 51.165 and 40 CFR 52.21, Prevention of Significant Deterioration and Non-attainment New Source Review: Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion. (CPG)

Response: The federal Equipment Replacement Provision (ERP) rulemaking, which was not published until October 27, 2003, was not included in the First Notice of this rulemaking, which was published on April 1, 2003. In order to properly include the ERP provision into this rulemaking, IDEM would need to republish a First Notice of Comment Period and begin the process over. In addition, IDEM and the public need time to review the new ERP regulation to evaluate its impact on air quality in Indiana. The current rulemaking, based on the December 31, 2002, U.S. EPA final rule, must continue as scheduled to assure that Indiana meets the January 2, 2006 requirement for a SIP submittal. There are several more phases of NSR Reform expected to be finalized in the *Federal Register* this year; it is not necessary to delay the parts already published in anticipation of future rules. IDEM has begun the public discussion on the ERP rule and will work with all interested parties on that issue in a second rulemaking.

Federal criteria for approving alternatives

Comment: In relation to federal criteria for approving alternatives, we encourage IDEM to begin with federal baseline language in rulemaking to gain acceptance and consider modifying language for the state later. (INCMA)

Response: Development of the draft rule language for the state rulemaking began by determining how the new federal language fit into the existing SIP approved rules. Changes are being recommended based on protecting air quality in Indiana and consistency with existing state programs. These changes have been discussed with U.S. EPA to assure they can be approved. U.S. EPA made it clear in the December 31, 2002 preamble that state and local agencies "have the freedom to customize their NSR program" as long as they meet the requirements of Part 51 "with different but equivalent regulations." (67 FR 80241, Section VII on p. 80241, col. 2 of the December 31, 2003 Federal Register)

No increases in total emissions

Comment: An underlying principle that must guide any proposed changes to Indiana's NSR rules is that no change results in increased total emissions or authorizes increased emissions when

compared with the current NSR rules. IDEM's proposed rules must not allow backsliding in Indiana's efforts to achieve cleaner air. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM agrees, and has made the adjustments to assure no backsliding in the quality of air in Indiana. For example, even after the 1990 amendments to the federal Clean Air Act removed the mandate, Indiana has maintained the authority to regulate certain hazardous air pollutants, including mercury, under the PSD program. In addition, IDEM is recommending a change to the retroactive designation of clean units because the federal provision would result in greater air emissions than the current state program in a manner that is not consistent with the goals of the CAA.

SIP changes

Comment: IDEM must ensure that SIP changes do not interfere with attainment of an air quality health standard. The Clean Air Act (CAA) prohibits modification of clean air programs in effect before the CAA Amendments of 1990 unless the modification results in equal or greater emission controls. The CAA also prohibits backsliding with regards to emission standards or limitations in SIPs. IDEM has stated that some of the rule changes could in fact result in some emission increases. This would be a violation of Sections 193 and 116 of the CAA. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM has maintained existing provisions or revised the new federal rules to prevent backsliding of air quality in Indiana. With the revisions that have been proposed, IDEM does not believe there will be an actual increase in emissions over what would have been allowed under the current state rules. Under some of the new provisions, such as the PAL, there may be a decrease.

Title V revision procedures

Comment: IDEM proposes specific revision procedures to address clean unit designations, listed PCPs, non-listed PCPs and PALs. We support IDEM's approach to use minor modification procedures for clean units and listed PCPs and to use significant modification procedures for non-listed PCPs and PALs. (CASE) (ALCOA)

Response: IDEM agrees that these approaches make sense.

Federally enforceable

Comment: We believe the phrase "federally enforceable" should never be used in the Indiana rules because it is inconsistent with three significant court rulings in 1995 that found U.S. EPA had not provided adequate justification for requiring federal enforceability. U.S. EPA provided no new justification for using federal enforceability in response to the court rulings in the preamble to the final rules. Instead, U.S. EPA only offers that the 1995 court rulings held that it was impermissible to require federal enforceability as an element of defining "potential to emit", and that other uses of the

concept are still permissible. This approach ignores the merits of the 1995 court rulings.

We believe it does not jeopardize Indiana's ability to obtain SIP approval for its NSR programs. Indiana should not agree to include the phrase in its rules unless U.S. EPA justifies the use of federal enforceability in each instance where it is used in the major NSR rules. (ELC)

Response: The court rulings removed the term "federally enforceable" from the definition of potential to emit. The federal rules that are the subject of this rulemaking include the term "federally enforceable" and were promulgated after the lawsuits. It appears that U.S. EPA considered the lawsuit when drafting the revisions because the term "enforceable as a practical matter" is also included along with nearly every new reference to the term "federally enforceable".

IDEM has removed the term "federally" from uses of the term "federally enforceable" in the definitions of "allowable emissions" and "potential to emit" to be consistent with the PSD definitions and because court decisions in 1995 vacated the requirement (Nat. Mining Assoc. v. U.S. EPA, 59 F.3d 1351 (D.C. Cir. 1995) and Chem. Manufacturer's Assoc. v. U.S. EPA, 70 F.3d 637, (D.C. Cir. 1995)). We do not have the authority to remove it from anything else.

Compliance consequences if actual emissions exceed projected emissions

Comment: We requested that the rule provide that BACT be retroactive to the date of the actual physical change, as opposed to BACT at the time of discovery. IDEM's response to this comment was non-responsive. It simply said this was an implementation and compliance issue that did not need to be addressed in the rule. That is not correct. The rule must provide guidance to both the regulated entity and to IDEM so when enforcing its requirements the rule actually provides BACT at the time of the physical change or BACT at the time of discovery that BACT should have applied earlier. It is not acceptable for IDEM's Office of Enforcement to pick and choose what it will do. The rule must give direction for what IDEM's Office of Enforcement is to do.

We requested that the rule include the ramification or a list of the actions IDEM may take when a facility reports an exceedence of its projected actual emissions. IDEM's response was that the exceedence might be referred to enforcement. The rule needs to specifically state all the different actions IDEM may take and the basis for determining which action to take. For example, one action could be to enforce. But the rule should state what conditions make enforcement appropriate. Alternatively, an appropriate action could be to allow a specified period of time for the permittee to retest or provide a written report to explain other causes of the exceedence that are not related to the physical change made. (INCMA)

Response: IDEM cannot allow a source to apply BACT retroactive to the date of the physical change. The November 17, 1998, U.S. EPA memo titled "Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements", states that the source must comply with the BACT or LAER determination made at the time a source goes through NSR permit review. Thus, if a source violates NSR in 2003 and applies for a permit in 2005, whatever technology is BACT

or LAER in 2005 will be required in the permit.

Any violation of the permitting requirements will be handled by IDEM's Office of Enforcement in accordance with IC 13-30-3-1. The permitting rules contained in 326 IAC 2 explain the permitting procedures, but they are not designed to describe the enforcement procedures or specific enforcement consequences. Enforcement may be appropriate for any violation depending on many site specific issues thus making it improper to address in a rulemaking. Therefore, this will not be addressed in the NSR permit rules.

BACT and LAER clarification

Comment: Clarification should be provided as necessary in individual locations within the proposed new rule language that BACT applies in attainment areas and LAER applies in nonattainment areas. It should be acknowledged that a unit that meets LAER more than meets the requirements of BACT. For a unit seeking clean unit designation that meets LAER in an attainment area, it should be clearly acknowledged that such a unit more than satisfies the requirements for a clean unit designation. (NIPSCO)

Response: The applicability of the PSD requirements in 326 IAC 2-2 in attainment or unclassified areas is stated in 326 IAC 2-2-2(b). As part of the PSD rules, the BACT requirements in 326 IAC 2-2-3 are understood to apply in attainment or unclassified areas. Likewise, 326 IAC 2-3-2(a) indicates that the emission offset rules of 326 IAC 2-3 apply in nonattainment areas, therefore the LAER requirements in 326 IAC 2-3-3(a)(2) apply in nonattainment areas. Further clarification in the rule is unnecessary.

IDEM agrees that a unit that received a permit requiring LAER should continue to qualify for a clean unit designation when its area is redesignated attainment. The phrase "or LAER" has been added in several subsections of 326 IAC 2-2.2-1 and 326 IAC 2-2.2-2 that were not included in the federal rule to clarify this intent.

Clarification of references to P.L. 231-2003, SECTION 6

Comment: We believe it would be appropriate to provide a clarification or description of P.L. 231-2003, SECTION 6, and where copies may be obtained. (NIPSCO)

Response: For clarification, IDEM has changed the rule title to read, "Federal NSR Requirements for Sources Subject to P.L. 231-2003, SECTION 6, Endangered Industries". In addition, the draft rule incorrectly identified this public law as "P.L. 231-0003"; this has been corrected to "P.L. 231-2003".

P.L. 231-2003, SECTION 6, passed by Indiana legislators in 2003, prohibits the environmental boards from adopting a new rule before July 1, 2005, that would require certain

industries to comply with standards of conduct that exceed federal standards. In the draft rule, 326 IAC 2-2.6 has been added to comply with this legislation.

This new Indiana law can be found on the internet at http://www.in.gov/legislative/pdf/acts_2003.pdf. It will also be available in the Indiana Legislative Counsel Acts 2003 when published. IDEM will provide copies upon request.

Compliance certifications under Nonrule Policy Document

Comment: IDEM has indicated that it plans to revise the Nonrule Policy Document regarding Title V annual compliance certifications to require that a permittee include exemptions from NSR in its annual certification. IDEM needs to provide that language in the rules so that stakeholders can review and have input on this change. (INCMA)

Response: IDEM does not believe it is necessary to revise the rule. The language in 326 IAC 2-7-6(5)(C)(v) already states "Such other facts as the commissioner may require to determine the compliance status of the source." IDEM inspectors need this information to verify compliance. IDEM will provide clarification in the Annual Compliance Certification Non-Rule Policy Document. When the Non-Rule Policy Document is revised, there will be an opportunity for public review and comment.

Fees

Comment: We support the idea that IDEM should be able to collect fees for new review functions created by the NSR reform rules, such as a technology review to obtain a clean unit designation or establishing PAL permits. In addition, we recognize the difficulty of developing fair and equitable fee rates that will enable IDEM to collect some funds to offset its expenses. However, we believe the proposed fees for establishing a PAL are too high. We recognize that establishing PAL permits can be resource intensive. But the idea that establishing a PAL permit for a complex manufacturing facility is automatically a resource intensive activity is too simplistic. PAL fees should not reflect the complex regulatory requirements already applicable to a facility. We recommend either the emission fee rate in dollars per ton be lower or the PAL fees be based on the number of emission sources that have to be evaluated and monitored. In the alternative, the rules could establish an overall cap for fees, such as $50,000.

In addition, the proposed rules appear to impose the same fees when a PAL is reestablished after 10 years. Although the PAL rules call for a reevaluation of the PAL levels when reissuing a PAL permit, the level of effort to conduct this review will not be as extensive. The fees for reestablishing a PAL permit should be significantly lower than establishing the permit. (ELC)

Comment: The fee provisions for a PAL are too high. At $40 per ton, this would discourage companies from applying for a PAL. The fee should be lowered or adjusted to less than $40,000 per pollutant cap if a source requests a PAL for more than one pollutant. (INCMA)

Response: After further review, IDEM believes that a maximum fee of $40,000 is reasonable. The language in 326 IAC 2-1.1-7(3)(F)(iii) has been changed to reflect this.

There is no requirement in the rules for a renewal fee for a PAL. Major sources do pay annual operating fees which should cover the cost of reevaluating a PAL at the end of a permit term.

Attainment and unclassifiable areas

Comment: The proposed revisions in 326 IAC 2-2-2(b) reference attainment and unclassifiable areas as specified in sections 107(d)(1)(A)(ii) or 107(d)(1)(A)(iii) of the Clean Air Act. The proposed language shows the deletion of the current reference to the listing of attainment and unclassifiable areas in 326 IAC 1-4. This is inconsistent with the proposed language of 326 IAC 2-2-2(g) which retains the reference to 326 IAC 1-4 for nonattainment areas, not references to the Clean Air Act. We would appreciate a clarification on why the references to the CAA are used for the attainment/unclassifiable portions while the nonattainment area references are to 326 IAC 1-4. (NIPSCO)

Response: IDEM agrees that the reference regarding nonattainment areas should be 326 IAC 1-4, not the CAA. This change has been made in 326 IAC 2-2-2(b).

Annual emission information

Comment: In 326 IAC 2-2-8(b)(4) and 326 IAC 2-2-8(b)(5), we question the need to have the owner or operator provide the listed annual emission information within 60 days of the end of the year. The information is included in the annual emission statement that is provided by the owner or operator to IDEM as specified in the schedule in the emissions reporting rule. Submittal of the information in the time period listed in this proposed rule is unnecessarily in advance of the annual emission statement submittal deadline and duplicative of the efforts and information provided in the annual emission statement. We recommend the submittal deadline proposed in this provision be changed to coincide with the deadline of the emission reporting rule to prevent imposition of an unnecessary early reporting burden on the regulated community. (NIPSCO)

Response: The reports required by the source obligation sections of 326 IAC 2-2 and 326 IAC 2-3 are specific to the modification. The source obligation requires the reports to be submitted within 60 days of the end of the calendar year. This reporting date is from the new federal rules at 40 CFR 51.166(r)(6) and 40 CFR 52.21(r)(6). A separate state rule, the emission reporting rule at 326 IAC 2-6, applies to the entire source and requires the annual emission statements on July 1 of each year. The scope of the NSR rulemaking does not allow for changes to be made to the emission reporting rule through this rulemaking.

Hydrogen fluoride

Comment: We recommend that Indiana's rules include explicit language to ensure there is no confusion about whether hydrogen fluoride should be excluded from the emission estimates for fluorides. 326 IAC 2-2-1(xx)(L) should be amended to read, "(L) Fluorides **(excluding hydrogen fluoride)**: three (tons per year);"

In addition, we recommend hydrogen fluoride should be excluded from the ambient impact analysis for fluorides that is required to determine whether preconstruction monitoring and other ambient impacts are needed. 326 IAC 2-2-4(b)(2)(A) should be amended to read: "(L) Fluorides **(excluding hydrogen fluoride)**: 0.25 Fg/m^3, 24-hour average;"
(ELC)

Response: IDEM recommends that the rule continue to regulate the hazardous air pollutants that are specifically listed under the definition of "significant" in 326 IAC 2-2-1(xx). U.S. EPA has apparently chosen to delete hydrogen fluoride from the list of pollutants regulated by the PSD program because it will also be regulated by a NESHAP under Section 112 of the Clean Air Act. One of the uses of this highly corrosive acid is to etch glass. Indiana's PSD program regulates fluorides, including hydrogen fluoride, at major sources or modifications if emissions are above three tons per year. Section 112 does not typically regulate pollutants at levels less than ten tons per year. Hydrogen fluoride is a colorless gas that can cause severe respiratory damage with acute exposure and irritation and congestion of the nose, throat, and bronchi at low, chronic levels of exposure. IDEM has consistently recommended that the PSD program continue to regulate the specifically listed toxic air pollutants including, among others: asbestos, beryllium, mercury, and fluorides. Therefore hydrogen fluoride has not been excluded from fluorides in 326 IAC 2-2-1(xx)(L) and 326 IAC 2-2-4(b)(2)(A).

Definitions

Baseline actual emissions and projected actual emissions

Comment: The definitions of "baseline actual emissions" in 326 IAC 2-2-1(e) and 326 IAC 2-3-1(d), and "projected actual emissions" in 326 IAC 2-2-1(rr) and 326 IAC 2-3-1(mm), both include language intended to address emissions from malfunctions, startups, and shutdowns if affected by a proposed project. The wording of these provisions could be clarified as follows:

- 326 IAC 2-2-1(e)(1)(A) and 326 IAC 2-2-1(e)(2)(A) should read:
  (A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they **are affected by** ~~affect~~ the project.
- 326 IAC 2-2-1(rr)(2)(A)(ii) should read:
  (ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions **to the extent they are affected by the project**; and

- 326 IAC 2-3-1(d)(1)(A) and 326 IAC 2-3-1(d)(2)(A) should read:
  (A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they **are affected by** ~~affect~~ the project.
- 326 IAC 2-3-1(mm)(2)(A)(ii) should read:
  (ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions **to the extent they are affected by the project**; and

(ELC)

Response: IDEM agrees that these emissions need only be included as they are affected by the project and has made appropriate changes in the draft rule. However, U.S. EPA has indicated that use of the phrase "to the extent quantifiable" would not be approved into the SIP. They agree that it may not always be possible for a source to quantify these emissions, but prefer that this be handled on a case-by-case basis in permitting, rather than in the rule. To assure that the rules will be approved into the SIP, IDEM has removed the phrase "to the extent quantifiable" from the startup, shutdown, malfunction portion of 326 IAC 2-2-1(e)(1)(A), 326 IAC 2-2-1(e)(2)(A), 326 IAC 2-3-1(d)(1)(A), and 326 IAC 2-3-1(d)(2)(A).

Clean unit

Comment: The "clean unit" definition in 326 IAC 2-2-1(m) is unclear because it does not clearly identify if the unit has to meet all three of the items in 326 IAC 2-2-1(m)(1), or only one of 326 IAC 2-2-1(m)(1)(A), 326 IAC 2-2-1(m)(1)(B), or 326 IAC 2-2-1(m)(1)(C), or if it only needs to meet one of the requirements of 326 IAC 2-2-1(m)(1), 326 IAC 2-2-1(m)(2), or 326 IAC 2-2-1(m)(3). Clearer language would be appreciated. (NIPSCO)

Response: IDEM has adopted the definition of "clean unit" from the federal regulations at 40 CFR 51.166(b)(41), and has kept it unchanged. The format of this definition in 326 IAC 2-2-1(m) and 326 IAC 2-3-1(j) is the preferred format of the Legislative Services Agency (LSA) which controls this type of editing. IDEM will take this opportunity to clarify that a clean unit must meet one of the three provisions, 326 IAC 2-2-1(m)(1), 326 IAC 2-2-1(m)(2), or 326 IAC 2-2-1(m)(3), because the term "one of the following" is used at the subsection level. To meet the requirements in subdivision 326 IAC 2-2-1(m)(1), the clean unit must meet all three of the items, 326 IAC 2-2-1(m)(1)(A), 326 IAC 2-2-1(m)(1)(B), and 326 IAC 2-2-1(m)(1)(C), as indicated by the use of the term "and" within 326 IAC 2-2-1(m)(1).

Comment: In 326 IAC 2-2-1(m)(1)(B), it would be helpful if this language was more specific regarding the compliance with BACT or LAER. Since BACT and LAER vary over time, a clarification regarding the BACT or LAER at the time of submittal of the application is recommended. (NIPSCO)

Response: The phrase in 326 IAC 2-2-1(m)(1)(B), "…is complying with BACT or LAER requirements…", refers to the BACT or LAER requirements from the major NSR permit that requires compliance with BACT or LAER that is referred to in 326 IAC (m)(1)(A). IDEM has made a change to the language in 326 IAC 2-2-1(m)(1)(B) to clarify this meaning. IDEM also made a parallel change to the definition of "clean unit" in 326 IAC 2-3-1(j)(1)(B).

Net emissions increase

Comment: What was the justification for adding the language that an increase or decrease in actual emissions is creditable only if the increase or decrease occurs within a reasonable period as determined by the department? What are the criteria that will be used to establish a reasonable time? (INCMA)

Response: This was a mistake made when incorporating federal rule language from 40 CFR 51.166(b)(3)(iii)(*a*) into the state rule format. The reasonable period is the contemporaneous period provided in 326 IAC 2-2-2(jj)(2). IDEM has removed that particular language from the draft rule.

Pollution control project

Comment: The language in 326 IAC 2-2-1(ll) at the end of the third sentence "...through the PCP.2-2.3-1(c)(1)." is confusing. Was it intended to say "...through the PCP provisions of 326 IAC 2-2.3-1(c)(1)."? (NIPSCO)

Response: IDEM intended the language in the third sentence of 326 IAC 2-2-1(ll) to read, "…to reduce emissions through the PCP." IDEM has removed the rule cite, "2-2.3-1(c)(1)", at the end of the sentence because it was a typographical error.

Regulated NSR pollutant

Comment: IDEM states that it is modifying the definition of "regulated NSR pollutant" to include asbestos, beryllium, mercury and vinyl chloride. We object to inclusion of these pollutants in the federally enforceable section of the Indiana's PSD program because it is prohibited by the Clean Air Act (CAA). Section 112(b)(6) of the CAA clearly prohibits regulation of the pollutants IDEM proposes to regulate under the PSD program, each of which is a hazardous air pollutant listed in CAA §112(b). While Section 116 of the Clean Air Act provides that nothing prohibits a state from adopting and enforcing provisions that are more stringent than federal law, it does not authorize IDEM to make any state law it chooses federally enforceable, particularly where such is expressly prohibited by Section 112(b)(6). If IDEM wishes to regulate these pollutants, it must do so as a matter of state law only and not submit this aspect of the regulations for SIP approval. If IDEM wishes to obtain SIP approval for the regulation of these pollutants, it must show that such regulation is required to attain or

maintain compliance with a NAAQS and that it does not conflict with the express prohibition under Section 112(b)(6). (CASE) (ALCOA)

Response: IDEM disagrees that the state program cannot include asbestos, beryllium, mercury and vinyl chloride. In addition, IDEM proposes to continue to regulate hydrogen fluoride with fluorides. When U.S. EPA removed them in the 1990 CAA Amendments, it allowed states to continue to regulate them (refer to March 11, 1991 John Seitz memo titled "New Source Review (NSR) Program Transitional Guidance"). This is not a change proposed in this rulemaking because these pollutants have always been included in the Indiana program. In addition, these pollutants were included in the Indiana program when U.S. EPA approved Indiana's PSD permitting rule into the state implementation plan on March 3, 2003. Therefore, the state rules concerning these pollutants are federally enforceable.

Comment: Under Indiana Code 13-14-9-4, IDEM is required in a notice of second public comment period to identify the environmental circumstance or hazard that dictates the imposition of a requirement that is not imposed under federal law and to provide examples where the federal law is inadequate to provide that protection along with the estimated fiscal impact and benefits. IDEM is also required to describe the availability of material relied upon. IDEM did not provide this required information regarding its imposition of an additional requirement to include asbestos, beryllium, mercury and vinyl chloride under the NSR rules. (INCMA)

Response: IDEM disagrees that this information was required with this rulemaking. These pollutants were already in the existing SIP-approved rule. Retaining them does not create a new requirement nor does it create an additional fiscal impact, therefore this information did not need to be submitted with this rulemaking. In addition, not including them in this rulemaking would make Indiana's air quality program less protective of human health by eliminating provisions concerning pollutants that are well understood to be among the most toxic and that have been regulated by U.S. EPA as hazardous air pollutants for years.

Comment: In 326 IAC 2-2-1(uu)(1), the language is vague and needs clarification. It appears the intent of this subdivision is to include constituents or precursors of the pollutants for which a national ambient air quality standard (NAAQS) has been promulgated by U.S. EPA. The following language is recommended to provide this clarification consistent with the presumed intent:

(1) Any air pollutant for which a national ambient air quality standard (NAAQS) has been promulgated and any U.S. EPA identified constituents or precursors of a NAAQS pollutant. (NIPSCO)

Response: The language was taken from the federal rules at 40 CFR 51.166(b)(49) and 40 CFR 52.21(b)(50). IDEM prefers to follow the federal definitions where possible and does not feel that clarification is necessary in this case. The use of the term "the pollutants" in the second half of the sentence in 326 IAC 2-2-1(uu)(1) refers to "any pollutant for which a national ambient air quality

standard has been promulgated" from the first part of the sentence; therefore, it is clear that the subdivision includes constituents or precursors of the pollutants for which a national ambient air quality standard has been promulgated.

Comment: The provision in 326 IAC 2-2-1(uu)(5) is unclear. The inclusion of the cross reference to "any pollutant listed in subsection (xx)" is a circular reference because 326 IAC 2-2-1(xx)(1)(V) refers to "Any regulated NSR pollutant", the very term 326 IAC 2-2-1(uu)(5) is attempting to define. Because this is a deviation from the federal language, we recommend IDEM not deviate from the federal language. If IDEM insists on deviating from the federal language, it should do so carefully and consistently. (NIPSCO)

Response: IDEM agrees that the reference is circular and has changed the language to correct the problem. This is a deviation from the federal language for the definition of "regulated NSR pollutant" because IDEM has chosen to continue to regulate asbestos, beryllium, mercury, and vinyl chloride to prevent backsliding. This portion of the definition is necessary in order to clarify this intent. The reference in 326 IAC 2-2-1(uu)(5) has been changed to "subsection (xx)(1)(A) through subsection (xx)(1)(U)".

Applicability Test

Real emissions increase test as applied to increased utilization

Comment: On the issue of real emissions increase test as applied to increased utilization, IDEM responded that it believes that the new basic applicability test focuses on "real emissions increases" and that many of the proposed modifications will now only be subject to the minor NSR program. IDEM has not addressed, in its comments or in the rules, how it plans to review "increased utilization" issues that involve collateral equipment. In the past, IDEM has assumed that any increases in emissions were caused by the modification. Does IDEM now propose to allow the source to make this determination and not to impose any assumptions? Related to the move to an actual to projected actual emissions applicability test, we believe there should be a clearly stated exemption for emissions that are not attributable to the modification. (INCMA)

Response: There have been no changes to the rule or policy regarding increased utilization. The current analysis method for units where the increased utilization occurs is actual to future actual. Under the new rules, the past actual to projected actual will apply to the unit being modified as well as the units that are affected by increased utilization. For the most part, increased utilization is analyzed when the modification to an emission unit causes an increase in efficiency. This is generally when an increase in utilization of other emission units occurs.

In addition, U.S. EPA is working on NSR reform to address debottlenecking and expects to publish a proposed rule this year.

Actual to projected actual emissions applicability test

Comment: We strongly support the move to an "actual to projected actual" emissions applicability test. (NSC)

Response: IDEM acknowledges the comment.

Comment: We oppose the proposal to allow the "actual-to-potential" emissions applicability test to be replaced with an "actual-to-projected-actual" applicability test. Allowing a polluting source to estimate its future emissions in order to determine applicability opens up the process to abuse resulting in inaccurate projections and essentially allowing the source to control whether the rules apply. (CAC) (HEC) (SDC) (STV) (VWI)

Response: The actual to projected actual test focuses on realistic increases in emissions. IDEM does not believe adopting the new applicability test will result in backsliding on air quality. The actual to potential test assumes the unit will operate at its maximum capacity 24 hours a day, 365 days a year, which is rarely the case. This method often results in overestimating the emissions increase for a particular project. If a source chooses to use the actual to projected actual test and determines the modification is exempt from major NSR review, they are still required to comply with the minor NSR and Title V program requirements. For instance, if there are projects that were not otherwise approved in a permitting process, then the source will include a list of the changes in the Title V annual compliance certification. IDEM will have this opportunity to review the projected actual emissions. If actual emissions turn out to be greater than predicted by the source, IDEM will take appropriate steps including the application of the correct permit requirement.

Additionally, sources are required to maintain emissions data of sufficient accuracy for the purpose of determining an emissions unit's post-change emissions. Electric utility steam generating units must report this information to the reviewing agency within 60 days after the end of the year. Non-electric utility steam generating units must report increases in post-change annual emissions when they exceed the baseline actual emissions by a significant amount and it differs from the projections that were calculated before the change. This information is also available for examination by the general public.

The actual to potential test is still available and if the source chooses to use it, they will be exempt from the record keeping and reporting requirements of the actual to projected actual applicability test.

Baseline determination

Comment: We oppose the "look back" provision of the Bush NSR rollbacks which would allow sources to choose their own 24-month baseline period from the previous ten years. Such a provision would allow for increases in emissions because the source could choose the most polluting 24-month period as its baseline. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: We strongly support the look-back period of 10 years and agree with the federal review of a reasonable business cycle. (NSC)

Response: The current state rules allow any 24- month period over the previous five years for electric utility steam generating units (EUSGUs) and the most recent 2-year period preceding the project that is representative of normal source operations for non-EUSGU's. U.S. EPA believes ten years is a fair and representative time frame for encompassing a normal business cycle. IDEM has a long history of implementing the current procedures for establishing past actual emissions. Emissions are directly affected by production rates which are in turn affected by market trends or cycles. IDEM has seen very long cycles in sectors such as automobile assembly and foundry operations. These cycles are often based on the specific product made at a specific plant. Unless there is an increase in capacity at a plant, emissions increases are more often the result of increased sales than minor changes within the plant. The proposed rule is intended to more realistically assess whether a change will cause an emissions increase. Sources must have data to support the units operation in order to use the look back period. The past actual emissions are adjusted to reflect decreases that resulted from new regulatory requirements. The assessment of projected future actual then focuses on emission increases caused by the project. IDEM proposes to incorporate the new applicability test into the state program.

Clean Units

Basis for clean unit designations

Comment: IDEM is proposing a provision less stringent than the federal rule by making clean unit designations more difficult to obtain. This discourages units from obtaining clean unit status and thereby could limit the air quality benefits intended in the federal rule. The methodology of the federal rule should be followed, including the federal methodology for BACT determination. (NIPSCO)

Comment: We are concerned with IDEM's proposed changes and we request that IDEM adopt U.S. EPA's approach for determining the level of control for clean units. IDEM's proposal to perform a case-by-case BACT/LAER analysis creates a significant burden for clean unit applicants, as well as the permitting agency, while creating little added environmental benefit. It is unlikely that a case specific BACT or LAER analysis will result in any significant difference than using an average of, or at least as stringent as recent decisions. IDEM's proposed approach creates a time-consuming and labor intensive process while U.S. EPA's approach is more streamlined and still provides assurances for having only well-controlled sources designated as clean units. (DCC)

Response: The Federal rule provides the following mechanisms for obtaining clean unit status:

(1) An emission unit that obtained a major NSR permit in the past ten years may use that BACT or LAER determination as the basis for being designated a clean unit. The designation is good for ten years from the date the control technology becomes operative on the emission

unit to be designated as clean unit, or three years from the issuance date of the major NSR permit, whichever is earlier.

(2) An emission unit that receives a major NSR permit in the future may use that BACT or LAER determination as the basis for being designated a clean unit for ten years.

(3) An emission unit equipped with air pollution control technology including pollution prevention (with the qualifying investment in technology) that did not receive a major NSR permit in the past can use the technology review procedures provided by the rule as the basis for being designated a clean unit. The designation is good for a period starting from the date the minor NSR permit designating the clean unit is issued to the end of the 10 year period from the date the control technology was installed.

(4) A future emission unit that is not subject to major NSR can use the state's minor NSR process and the technology review procedures provided by the rule as the basis for being designated as a clean unit. The designation is good for ten years from the date the minor NSR permit is issued, or the date the control technology becomes operational, whichever is later.

IDEM proposes no changes to the process of designation of clean unit for the first two mechanisms for emissions units that followed the normal major NSR review process to establish BACT or LAER requirements.

IDEM is proposing to change the control technology review process for emission units that would receive clean unit designation through the minor NSR process. The federal process for attainment areas requires a review of the RACT/BACT/LAER Clearinghouse for determinations made at the time the emissions unit commenced operation and five years prior to that time. The clean unit designation is then based on the average of those determinations. The federal process for nonattainment areas requires a similar review of the Clearinghouse, with the designation being based on any one of the five best performing similar sources. This is significantly less stringent than how a BACT or LAER determination would have been made at that time. A BACT determination begins with the presumption that BACT is the most stringent emission level found during review. While a less stringent level of control can sometimes be justified, it is clear that an average is always going to be a less stringent limit than the best. LAER is defined as the most stringent level of control achieved by similar sources. Basing a designation on any of five is clearly less stringent than the best. In addition, review of the Clearinghouse is only part of a BACT or LAER determination. IDEM checks the information contained in the clearinghouse against the actual performance of the control technologies used for various emissions unit. IDEM takes into account additional factors such as if an emissions unit is performing significantly better than the emission limit. IDEM has found emissions units that have not achieved the emission limit listed in the Clearinghouse and takes those into account as well. IDEM also uses information collected by the U.S. EPA as they develop National Emissions Standards for Hazardous Air Pollutants. This information is usually more rigorous and complete than information contained in the Clearinghouse. Other sources of information are often supplied by applicants or

become known during the public process. Emission units qualifying for designation by virtue of their previous major NSR, BACT or LAER determinations went through this type of review.

IDEM proposes two changes to address the technology review process. First, the technology review process should be the same as provided under the major NSR review rules. These are existing, proven processes that are familiar to the public, applicants, and the agencies. A new unit seeking clean unit designation would be treated the same whether it was receiving a permit under the major or minor NSR programs. The second change is to base all designations made through the minor NSR process on current technology review information. IDEM would not attempt to perform a rigorous control technology review based on information that may or may not have been known in the past. It is difficult, if not impossible, to reconstruct the entire set of information that would have been available in the past. Also, the technology review of an emission unit built eight years ago would require establishing information from as long as thirteen years ago. Control technology requirements can change dramatically over a thirteen-year period. Some of the best technologies are rather mature. Sources that capture all VOC emissions and destroy them in some form of thermal oxidation would be only slightly affected by the difference between the federal process and IDEM's proposal. However, sources of NOx could be treated significantly different under the two processes. The federal technology review process for minor sources provides no benefit to air quality compared to IDEM's proposal.

IDEM has not identified any project that used clean technology in the past in order to take advantage of the clean unit test. On the whole, designations based on current information are going to be cleaner than those based on only old and partial information. An emissions unit would be treated as a clean unit for ten years after the designation.

Comment: We appreciate IDEM's position that units for which a clean unit designation is requested be required to meet BACT or LAER. We also appreciate IDEM's position that this BACT/LAER requirement be met with a "top-down" approach rather than an allowance for averaging BACT/LAER limits. We strongly support these requirements because they will help ensure that these units are adequately controlled. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM agrees that this change from the federal provisions will help ensure that the clean units are adequately controlled and promote greater air quality benefit.

Physical or operational characteristics

Comment: We agree that it is appropriate for IDEM to clarify what might be considered a physical or operational characteristic that formed the basis for a BACT or LAER determination. However, IDEM should clarify in its response to comments or preamble explanation of the rule that there may be cases in which there are no additional physical or operational characteristics beyond the BACT or LAER determination that need to be specified in the permit. If a permit's BACT or LAER

determination is detailed, the permit terms should be sufficient to establish clean unit status. When physical or operational characteristics do need to be specified, we agree with IDEM's indication in the preamble that any one of these or some other characteristic proposed by the permittee may be appropriate and that "redundant" characteristics should not be imposed. (CASE)

Response: IDEM agrees that a well-written BACT or LAER determination should be detailed and should specify sufficient permit terms to establish clean unit status. IDEM included the provision in the rule to ensure that there would not be confusion when such provisions are included in permit terms and conditions for clean units. IDEM does not intend to impose redundant characteristics. The intent of the provision is to clarify in the rule that something beyond a pound per hour or pound per ton or parts per million limit will be necessary to establish the clean unit characteristics. IDEM currently takes into account the proposals from the applicant regarding various characteristics that can influence the BACT or LAER permit terms and conditions and will continue to do so.

Comment: We request that IDEM clarify the form that the clean unit designation "terms" in the permit will take. Under the regulatory language, the Title V permit is required to specify the conditions of maintaining the clean unit designation. Specifically, it must include any physical or operational characteristics that formed the basis for the BACT or LAER determination. We are concerned that the proposed options of potential emissions, production capacity or throughput could be viewed as being affected by a project even though a plant does not intend to exceed the characteristics as listed in the permit. We do not believe the source should lose its clean unit designation unless it actually deviates from the operational characteristic listed in the permit. This issue can be addressed by giving a source the option of one of the following two approaches, which we believe are consistent with IDEM's regulations:

(1) If a plant wishes to accept a physical or operational characteristic as an actual, enforceable limitation on its operations, it may do so. Future projects at the clean unit that may affect its capabilities relative to these characteristics would not be considered to have altered the characteristics because the plant would remain subject to the limitations in the permit. If the plant wishes to exceed these limitations, a permit revision would be required.

(2) Alternatively, a plant can accept as conditions for maintaining the clean unit designation the physical or operational characteristics determined by IDEM. The permit would state that, if the plant decides to implement a change that would alter one of these characteristics, the clean unit designation would no longer apply and the source would become subject to the basic actual-to-projected-actual test that applies to all existing units. No permit revision would be required because the permit would already state the consequences of altering the designated physical or operational characteristics.

(CASE)

Response: This is an implementation issue. IDEM will work with the owners and operators of an emissions unit and the public when determining the appropriate terms and conditions for a particular

clean unit designation in a permit. A one-size-fits-all approach will not work in this case because of the many different types of emissions units that could obtain clean unit status and the types of BACT or LAER determinations.

The Part 70 requirements will require a permit modification whenever clean unit status is lost such that the permit terms and conditions accurately reflect the applicable requirements for the unit. The type of permit modification required will most likely partially depend on the action that causes or will cause the unit to lose its status.

Timing for Controls Comparable to BACT or LAER

Comment: IDEM proposes that a facility may not obtain the clean unit designation for projects that were undertaken prior to issuance/approval of its rules unless a major NSR permit was obtained. While we believe that IDEM should adopt the federal approach, we understand IDEM's concern about the resources that might be needed to recreate BACT or LAER determinations. Because IDEM and sources are now on notice of this requirement in the rule, these resource issues should not present a problem for any controls installed after March 3, 2003, the effective date of the federal rule. Therefore, IDEM should state that any controls installed after March 3, 2003 should qualify for the clean unit designation. We are concerned that, although IDEM is moving expeditiously to adopt the new rules, there may be a substantial time period before U.S. EPA approval of the new rules simply due to the time required to complete the appropriate procedures. In the meantime, sources and IDEM are well aware of what is required to establish a clean unit designation and there should be no hardship in meeting these requirements for minor NSR permits issued after March 3, 2003. (CASE)

Response: Minor sources that construct between March 3, 2003 and the anticipated October 2004 effective date of Indiana's NSR rules are not only on notice of the federal rule, but have been on notice of IDEM's proposal since September 1, 2003. If IDEM's proposal is adopted into Indiana's NSR rules, then a source would only be affected if it chose to install equipment that qualified under the federal five year averaging, or selection, process rather than technology that was more clearly BACT or LAER. Control technology requirements are not likely to be significantly different between March 3, 2003 and October 2004.

Information required for clean unit designation request

Comment: The language in 326 IAC 2-2-10 does not contain any substantive information about what information is required of the applicant who requests a clean unit designation per the provisions of 326 IAC 2-2.2-2. The specifics mentioned under paragraph (1) of this section appear to only apply to new sources or major modification. We presume that IDEM will issue guidance that will more closely identify the information needed by IDEM in order to issue a clean unit designation per the

provisions of 326 IAC 2-2.2-2. However, we recommend that IDEM consider language in this section identifying the information necessary for IDEM to make the clean unit designation. (TRI)

Comment: The existing language in 326 IAC 2-2.2-2(c)(2) does not clearly indicate that the requirement to demonstrate that the allowable emissions from the unit for which clean unit status is being requested is the responsibility of the owner or operator applying for this status. Unlike 326 IAC 2-2.2-2(c)(1)(A), there is no phrase indicating that the owner or operator must make this demonstration. If it is the intent of IDEM to have the owner or operator complete this demonstration as part of the application for the clean unit status under this section, a phrase should be added that would direct the interested parties to 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7. If it is not the intent of IDEM to have the owner or operator complete this demonstration as part of the application for the clean unit status under this section, then the proposed changes made by IDEM to 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7 should be reconsidered or eliminated. (TRI)

Response: IDEM has added language in 326 IAC 2-2-10 to clarify that the applicant shall submit the information for the clean unit designation process, including the air quality analysis. IDEM requires the owner or operator to make the air quality demonstrations for major new source review permitting and intends to require that the owner or operator make the demonstration for the allowable emissions from the unit for which clean unit status is being requested. The requirement to conduct the air quality analysis would apply whether or not IDEM cites the sections of 326 IAC 2-2 that address air quality impact analyses within the clean unit rules. IDEM previously added provisions in 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7 to clarify this intent. The U.S. EPA has not revised the federal PSD rule to include more specific application requirements for major new source review or for review of clean unit designations; therefore, IDEM will not include rule language to include more specific requirements. The evaluation criteria for clean unit designations to be used by IDEM are provided in 326 IAC 2-2.2 and 326 IAC 2-3.2. The information provided by the owner or operator should be sufficient to evaluate the control technology in accordance with the criteria specified in the rule.

Exemption from air quality analysis for sources that have not gone through a NSR permitting review

Comment: We suggest that owners or operators of stationary sources that request a clean unit designation, but have not gone through a major NSR permitting review be allowed, at a minimum, the same exemptions as allowed for new or modified sources. Suggested changes to 326 IAC 2-2-4(b)(2) are:

(b) Exemptions are as follows:

(1) ....

(2) A source or modification **or clean unit designation per 326 IAC 2-2.2-2** shall be exempt from the requirements of this section with respect to monitoring for a particular pollutant if:

(A) the emission increase of the pollutant from a new source or the net emissions increase of the pollutant from the modification, **or the allowable emission rate on which the clean unit designation is based** would cause, in any area, air quality impacts less than....

(B) the concentration of the pollutant in the area that the source or modification **or clean unit designation** would affect are less than the concentrations listed in clause (A), or the pollutant is not listed in clause (A).

(TRI)

Response: IDEM agrees that an owner or operator that requests a clean unit designation without going through major new source review permitting should be allowed an exemption from the air quality analysis requirement if the allowable emissions are below the significance level. IDEM has made the suggested changes in 326 IAC 2-2-4(b)(2).

Requirements for sources that have not gone through a NSR permitting review

Comment: The existing language in 326 IAC 2-2-5(a) does not address, in all situations, what is required of an owner or operator of a stationary source that is requesting a clean unit designation but has not gone through a major NSR permitting review. The existing paragraph only addresses situations that involve allowable emissions increases. It is possible that an owner or operator may request a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger the need for an allowable emissions increase.

We suggest that the language be clarified so that owners or operators of stationary sources that request a clean unit designation but have not gone through a major NSR permitting review and are not requesting allowable emissions increases have definitive language on the required demonstration. Suggested changes to this section are:

(a) The owner or operator of the proposed major stationary source or major modification, or the owner or operator that requests a clean unit designation **per 326 IAC 2-2.2-2**, shall demonstrate that allowable emissions increases in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to air pollution in violation of....

(1)....

(2) any applicable maximum allowable increase over the baseline concentration in any area, **as described in section 6 of this rule.**

In the case of a clean unit designation, the owner or operator must demonstrate that the allowable emission rate on which the clean unit designation is based will not cause or contribute to air pollution in violation of the items noted in (1) and (2) above.

(TRI)

Response: Major new source review has always involved modeling the allowable emissions from a unit that was changed. The clean unit designation is not different in that the owner or operator is requesting a designation for the unit so that the owner or operator can modify the unit within specific constraints and avoid major new source review for those modifications. IDEM has clarified this intent by modifying the language in 326 IAC 2-2-5.

Units that have not gone through a NSR review and do not trigger an emissions increase

Comment: The existing language in 326 IAC 2-2-6(a) is confusing in that it appears to address "increased emissions." It is possible that an owner or operator may request a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger the any emissions increase.

We believe the language we proposed in our comment for 326 IAC 2-2-5(a)(2) would provide sufficient direction to the owner and operator who requests a clean unit designation for a unit that has not gone through a major NSR permitting review and does not trigger an emissions increase.

We suggest the language IDEM has added in section 6 related to clean units be eliminated as follows:

> (a) Any demonstration pursuant to section 5 of this rule ~~or 326 IAC 2-2.2-2(c)(2)~~ shall demonstrate that increased emissions caused by the proposed major stationary source, **or** major modification~~, or clean unit~~ will not exceed eighty percent (80%) of the available maximum allowable increases (MAI) over the baseline concentrations for sulfur dioxide, particulate matter, and nitrogen dioxide indicated in subsection (b)(1). ...

(TRI)

Response: IDEM agrees that the additional clarification was not necessary because Section 5 of the rule adequately addresses applicability of this section. IDEM has removed the added language in 326 IAC 2-2-6(a).

Air quality analysis requirements

Comment: Similar to requirements for requesting a clean unit designation for emission units that have not previously received a major NSR permit that IDEM has proposed to add under 326 IAC 2-2, IDEM has added similar rule language in 326 IAC 2-3. This language states that the department must determine that the allowable emissions for the emissions unit requesting a clean unit designation in a nonattainment area will not cause or contribute to a violation of any national ambient air quality standard or any applicable PSD increment. However, unlike in 326 IAC 2-2, there are no corresponding sections in 326 IAC 2-3 that direct the applicant about what type of air quality analysis should be performed. We suggest that IDEM clarify for those owners or operators who request a clean unit designation per 326 IAC 2-3.2-2 what the air quality analysis will entail. (TRI)

Comment: We believe that there is value in making the clean unit designation available to those emissions units that have not previously received a major NSR permit, even in nonattainment areas. We support IDEM's development of rules to this affect. However, the current proposed revisions under 326 IAC 2-3 do not adequately develop for the interested owners or operators the procedures to follow related to the air quality analysis requirements. (TRI)

Response: IDEM based the proposed provisions on the federal rules in 40 CFR Part 51.165. The federal requirements for state implementation plans have never specified the procedures to follow related to the air quality analysis for major new source review in nonattainment areas, and the revisions to the federal rules issued on December 31, 2002 did not include specific procedures either. IDEM will not make any changes at this time since the federal rules are not specific.

Minor modifications at major sources can obtain clean unit designation through the provisions in 326 IAC 2-3.2. If the physical change or change in the method of operation has a potential to emit greater than the significant levels defined under 326 IAC 2-3-1(qq), the department may require the owner or operator to model the net emissions increase to demonstrate that the impacts from the emissions increase are below the significant impact levels identified in 326 IAC 2-2-4(b)(2)(A). If the impacts are less than the significant impact level, then no degradation of air quality degradation is presumed to occur.

PSD increments

Comment: It does not appear to make sense that a demonstration of no violation of applicable PSD increments be made in a nonattainment area. By its classification as a nonattainment area for a pollutant, no increments are set and increment consumption is not relevant since the area in question does not meet the national ambient air quality standard for the nonattainment pollutant. (TRI)

Response: The federal provisions in 40 CFR 51.165(d)(3)(ii) include this reference to a demonstration of no violation of applicable prevention of significant deterioration increments in a nonattainment area. Therefore, IDEM must include this reference in the rule. IDEM agrees that in practical application the increment consumption requirements are not relevant in a nonattainment area since the area already does not meet the national ambient air quality standard for the nonattainment pollutant. To demonstrate that a unit that has allowable emissions greater than the significant level will not contribute to the violation, the department may require the owner or operator to model the net emissions increase to demonstrate that the impacts from the emissions increase are below the significant impact levels identified in 326 IAC 2-2-4(b)(2)(A).

Disallowing a clean unit designation

Comment: The proposed provision, 326 IAC 2-2.2-1(d)(2)(A), disallowing the clean unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of

a standard, uncontrolled, new emissions unit of the same type is contrary to the concept of BACT. The term "uncontrolled" implies post-combustion controls and as such ignores any emissions reduction benefits and additional expense incurred by an applicant to purchase and install an emissions unit that incorporates the latest in emissions reduction technology inherent in the design of that newest upgraded model of the particular piece of equipment. For example, a choice of a combustion turbine employing the latest in low-NOx emission reduction combustion technology in its design, without the addition of a post-combustion NOx control device, should not be disqualified if BACT for that unit has no additional control and it emits less NOx than the less expensive version of the same control technology. This provision should be modified to allow for clean unit designation for such a situation. (NIPSCO)

Response: The language in the proposed 326 IAC 2-2.2-1(c)(2)(A) [this provision was 326 IAC 2-2.2-1(d)(2)(A) in the Second Notice] is directly from the federal provisions at 40 CFR 51.166(t)(3)(ii)(*a*) and 40 CFR 52.21(x)(3)(ii)(*a*). The situation that the commentor describes, however, is not disallowed by this provision because it can be considered to be pollution prevention technology that can be considered for BACT for the reasons that the commentor stated. No change to the provision is necessary.

Investment for control technology

Comment: The provision, 326 IAC 2-2.2-1(d)(2)(A), should be modified to indicate that the "...investment to install the control technology..." includes the situation where an applicant incurs additional expense to purchase the lower emitting technology inherent in the design of an emission unit such as a control technology that includes low-NOx combustion technology as an inherent design feature. (NIPSCO)

Response: The language does not need to be changed because the phrase, "the level of a standard, uncontrolled, new emissions unit of the same type" encompasses a situation where an applicant incurs an additional expense to purchase a non-standard new emissions unit that inherently results in lower emissions. This provision was originally listed as 326 IAC 2-2.2-1(d)(2)(A) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(c)(2)(A) due to formatting changes.

BACT and LAER clarification

Comment: In 326 IAC 2-2.2-1(d)(3), current-day BACT or LAER should be clarified to specify it is the BACT or LAER as of the date of the submittal of the clean unit designation application to IDEM. In 326 IAC 2-2.2-1(e)(1), 326 IAC 2-2.2-2(c)(4), and 326 IAC 2-2.2-2(d)(3), current-day BACT should be clarified to specify it is the BACT as of the date of the submittal of the clean unit designation application to IDEM. (NIPSCO)

Response: The proposed language referring to "current-day BACT or LAER" is from the federal provisions at 40 CFR 51.166(t) and (u) and 40 CFR 52.21(x) and (y). "Current-day BACT or

LAER" is not "BACT or LAER" as of the date of submittal of the clean unit designation application. It is BACT or LAER as of the day of issuance of the determination. In accordance with the November 17, 1998, U.S. EPA memo titled "Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements", IDEM can consider information provided after the submittal of an application to determine BACT or LAER; therefore, the commentor's characterization is inaccurate. This provision was originally listed as 326 IAC 2-2.2-1(d)(3) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(c)(3) due to formatting changes.

Comment: In 326 IAC 2-2.2-1(g)(4), for clarity, it would be helpful if this provision specifically indicated the BACT or LAER is the BACT or LAER utilized for the clean unit designation. The following may be helpful:

"(4) All emissions limitations and work practice requirements adopted in conjunction with the BACT or LAER **for the clean unit,** and any physical...."

(NIPSCO)

Response: This meaning is clarified by taking the provision in the context of the provisions within the subsection. The language in 326 IAC 2-2.2-1(f) [this provision was originally listed as 326 IAC 2-2.2-1(g) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(f) due to formatting changes] states that the permit must include the terms and conditions listed within that subsection related to the clean unit. Each subdivision within the subsection refers to terms and conditions related to the clean unit designation. No rule change is necessary for clarification.

Presumptive determination

Comment: The provision, 326 IAC 2-2.2-2(d)(1), purportedly addresses whether a unit's emissions control technology is equivalent to BACT determined at the time of the submission of the clean unit designation application to IDEM. IDEM also proposes to compare the applicant's presumption of being comparable to BACT, as listed in 326 IAC 2-2-1(i), with additional BACT or LAER determinations of which it is aware. We question whether the comparison to LAER is appropriate and believe it should not be included in any comparison for consideration of a presumptive determination of whether a unit's emission control technology is equivalent to BACT. (NIPSCO)

Response: IDEM agrees that the reference to LAER is not necessary since the clean unit designation provisions in this section have been changed from the federal provisions to ensure that the emissions control technology is equivalent to BACT instead of the average of BACT and LAER determinations for the preceding five years. IDEM has removed the phrase "or LAER" from 326 IAC 2-2.2-2(c)(1). This provision was originally listed as 326 IAC 2-2.2-1(d)(1) in the Second Notice, but has been renumbered to 326 IAC 2-2.2-1(c)(1) due to formatting changes. It should be noted that the BACT determinations do include a consideration of LAER determinations.

Additional information for determination

Comment: We believe it is unfair for the IDEM to be making comparisons to "additional ... determinations of which the department is aware". The applicants and IDEM should be utilizing the same database containing the same information for this process and, therefore, IDEM should make this database available at no charge to the applicant prior to the applicant's submittal of the application.

If IDEM retains the language of the "any additional ... determinations of which the department is aware", it should explicitly state in the rule language the information from this and any additional information obtained during the public participation period must be limited to information of determinations no more current than the date of the applicant's submittal of their clean unit designation application to the department. (NIPSCO)

Response: The federal rule provisions at 40 CFR 51.166(u)(4)(i) and 40 CFR 52.21(y)(4)(i) include the language regarding consideration of additional determinations of which IDEM is aware; therefore, the language is appropriate and required by the federal provisions. IDEM would make available to the applicant and the public any additional information it considered in the clean unit determinations.

Renewals

Comment: On the renewal of a clean unit, the burden to require modeling for NAAQS for a renewal is an excessive expense to be required automatically. If at the end of a clean unit designation period, BACT or LAER has not changed for control of the pollutant or the clean unit is performing comparable to BACT or LAER, then the owner should be allowed to request a renewal with documentation of the BACT or LAER status, and provide test data to prove the unit is still complying within past limits set when the unit was first determined to be a clean unit. This renewal should be public noticed for 30 days. Modeling should only be required if BACT or LAER has changed significantly or there have been major changes to the NAAQS in the area. (NSC)

Response: The federal provisions at 40 CFR 51.166(t)(3) and (u)(3) and 40 CFR 52.21(x)(3) and (y)(3) require the same demonstrations for re-qualification as those required for qualification, including the air quality demonstration, except that the applicant will not be required to meet an additional investment test. In addition, section V.C.9. on page 80227 of the December 31, 2002 *Federal Register* notice (67 FR 80227) finalizing the federal major new source review revisions indicates that the emissions unit must go through an air quality review for re-qualification. The renewal will go through public comment for 30 days. Even if there are not changes in the national ambient air quality standards (NAAQS) in the area, more increment could have been consumed by new or existing sources since the time of the original designation. Since the renewed designation will allow the unit to make modifications for an additional ten years within certain constraints so that major new source

review, including a modeling analysis, will not be necessary, the modeling analysis at renewal must be required in accordance with the same guidelines as the original designation.

Pollution Control Projects

Support for pollution control project exemption

Comment: We support the revisions IDEM has proposed to the pollution control project exemption in this proposed rule. (AEP)

Response: IDEM agrees that simplifying the process for pollution control projects is a positive change.

Environmental analysis

Comment: We urge that a full environmental analysis be performed for all PCP applications to determine not only the air quality impacts that would result from the project, but also impacts to water and solid waste streams. This multi-media analysis is critical for PCPs and other environmental permitting programs and should be adopted by all of the environmental regulatory boards. The NSR rules should require verification and approval by IDEM that a PCP will realize true environmental benefits. (CAC) (HEC) (SDC) (STV) (VWI)

Response: The provisions at 326 IAC 2-2.3-1(g) and 326 IAC 2-3.3-1(g) ensure that a pollution control project will realize true environmental benefits and provide the documentation for IDEM to review during an inspection to verify that a pollution control project is operated and maintained consistent with the environmental benefit analysis. In addition, IDEM has the authority to review the notifications and applications submitted in accordance with 326 IAC 2-2.3-1(b) and 326 IAC 2-3.3-1(b). While pre-approval is only necessary for unlisted projects, IDEM has the authority to ensure that listed pollution control projects meet the environmental benefit and air quality criteria as well.

The U.S. EPA clarified that non-air pollution impacts will not be considered in the "environmentally beneficial" determination in Section VI.B.2.b. on page 80235 (67 FR 80235) and section VI.B.2.g. on page 80236 (67 FR 80236) of the preamble in the December 31, 2002 *Federal Register* finalizing the major new source review rule revisions. Therefore, IDEM cannot include a multi-media analysis in the requirements for the environmental benefit analysis for a pollution control project being evaluated for the exclusion.

If IDEM or a member of the public has a concern about the impacts of a project on other media, IDEM can discuss the project with other offices within IDEM to determine if authorities held by another office may be used to alleviate the concern. In the past, IDEM has discussed projects with other offices within IDEM when such multi-media concerns have arisen.

Minimizing collateral emissions

Comment: We support IDEM's decision to adopt the pollution control project (PCP) exclusion directly from the federal rules and to conform the existing state regulations to reflect the listed projects and other elements of the new exclusion. We are concerned, however, with the change that IDEM proposes regarding minimizing collateral emission increases in nonattainment areas. We believe that this provision is inappropriate and should be revised. The test in the federal rule is whether the project is environmentally beneficial. If a project meets that test, it should be approved. We recognize that U.S. EPA states in the preamble to the NSR Improvement rule that "because increases in a nonattainment pollutant contribute to the existing nonattainment problem, you or the reviewing authority must offset with acceptable emissions reductions any significant emissions increase in a nonattainment pollutant resulting from a PCP." (67 Fed. Reg. 80237.) We do not interpret this statement to require that the collateral increase must be offset to zero as is implied by the draft regulatory language. Indeed, U.S. EPA refers to "acceptable emissions reductions." A source would not even be required to use the PCP exclusion if it were not projecting a greater than significant increase in emissions of a collateral pollutant. Any source projecting a less than significant increase would simply be required to track its emissions under the reasonable possibility test. Thus, any offsetting required should only need to reduce the projected actual increase level down to the significant level. (CASE) (ALCOA)

Response: IDEM disagrees with this interpretation. The concept of offsets for major new source review has always been to completely offset emissions increases to at least zero. IDEM has interpreted the term "acceptable" to mean that IDEM does not have to require the higher offset to emissions increase ratios that are required for projects that must go through major new source review in a nonattainment area. IDEM has provided a one-to-one ratio instead of the 1 to 1.3 ratio as an encouragement to pollution control projects in nonattainment areas that otherwise would have been required to go through major new source review and obtain greater offsets. IDEM agrees that the final test is to prove that the project is environmentally beneficial, and for nonattainment areas, part of the proof is provided by offsetting the significant increase. If the project does not result in a greater than significant increase in a collateral pollutant, the project will not be required to apply for the exclusion or obtain offsets.

Comment: IDEM should clarify in the rule that this offset requirement would not apply where the collateral increase is of a substance that is a precursor for the same NAAQS pollutant. In other words, if a PCP would reduce VOC but slightly increase NOx in an ozone nonattainment area, the source should not be required to offset the NOx emissions since NOx and VOC are both precursors to the same NAAQS pollutant, ozone (unless the area was also not in attainment for NOx). (CASE) (ALCOA)

Response: While nitrogen oxides are precursors for ozone, there are currently no requirements in Indiana for sources to consider nitrogen oxide emissions increases under the nonattainment new

source review rule provisions in ozone nonattainment areas. However, IDEM notes that the offset requirements may change under the 8-hour ozone and $PM_{2.5}$ implementation rules when U.S. EPA finalizes them. The existing offset procedures consistent with 326 IAC 2-3 will be followed. Therefore, a clarification is not necessary in the rules.

Public notice for pollution control projects

Comment: The length of time to procure and install equipment varies widely and is immaterial to the issue of public notice. We maintain that adoption of U.S. EPA's approach in not requiring a public comment period for changes related to a pollution control project should be adopted. (INCMA)

Response: The federal rules at 40 CFR 51.166(v)(5) and 40 CFR 52.21(z)(5) require a public comment period for the approval of a pollution control project exclusion for unlisted projects; therefore, IDEM has adopted the federal approach. The Part 70 rules and Indiana's associated rules implementing the Part 70 program at 326 IAC 2-7 require that all applicable requirements be included in a Part 70 permit. The addition of a listed pollution control project that uses the proposed pollution control project exclusion provisions triggers a new applicable requirement from 326 IAC 2-2.3-1(g) or 326 IAC 2-3.3-1(g). Since a new applicable requirement is triggered, the Part 70 permit must be amended. In accordance with 326 IAC 2-7-11, an administrative amendment cannot be used to add a new applicable requirement; therefore, the minor permit modification procedures will be used. While the minor permit modification procedures in 326 IAC 2-7-12 require a public comment period, the applicant is allowed to proceed with the project without waiting for the minor permit modification to be issued. Therefore, the minor permit modification procedures will not affect the length of time to procure, install, and operate pollution control project equipment.

Listed projects

Comment: We reject IDEM's statement that it is not necessary for IDEM to draft a procedure for adding projects to the list because they lack authority to do so. We believe it is within IDEM's authority and responsibility to identify environmentally beneficial projects even with federal endorsement. (INCMA)

Comment: We believe there is an opportunity to further pollution prevention efforts in Indiana in the qualification of pollution control projects as "listed" versus "unlisted". Neither IDEM's draft NSR rule or U.S. EPA's rule provide a mechanism for proven and tested environmentally beneficial pollution control projects that are unlisted to become listed, thereby becoming eligible for the advantages afforded to listed projects. In order to provide an avenue for unlisted environmentally beneficial pollution prevention projects to become listed, thereby making available the less burdensome minor permit modification provisions, an avenue for unlisted, proven pollution control projects to become listed should be developed. (PPP)

Response: IDEM disagrees that it is within its authority to add projects to the presumptive list. The U.S. EPA stated in Section VI.B.2.d. on page 80236 (67 FR 80236) of the preamble in the December 31, 2002 *Federal Register* finalizing the major new source review rule revisions that the U.S. EPA will update and maintain the presumptive list through notice and comment rulemaking. If and when sufficient data become available to justify that an unlisted pollution control project should be evaluated to be a listed pollution control project, IDEM can discuss the project with U.S. EPA to recommend adding the project to the list. If U.S. EPA makes changes to the presumptive list, then IDEM will pursue the same changes in the state rules.

Treating a PCP as a significant source modification

Comment: The fee of $3,500 required for a permit to "allow" a source to install or initiate a pollution control project is the same fee required for the installation of a significant emissions unit. If IDEM wants to encourage pollution control projects, it should not impose fees on a source to do so. (INCMA)

Comment: It is expensive for sources to pay a consultant to prepare an application for a significant source modification, pay a $3,500 fee and pay for the equipment or the project to be implemented. Treating a pollution control project the same as an emissions unit project will only serve to discourage sources from installing pollution control equipment or implementing projects that reduce emissions. (INCMA)

Response: Most pollution control projects do not cause a significant increase in emissions, and, therefore, do not require the pollution control project exclusion from major new source review permitting and do not have an associated fee. For those projects that result in a significant increase in emissions, the significant source modification is required for unlisted projects because of the level of the emissions increase and the requirements in the federal rules for the permitting agency to issue an approval subject to public notice and U.S. EPA review for those projects that are not listed. While IDEM encourages pollution control projects, IDEM is also obligated to ensure that the air quality standards will not be violated whenever a major stationary source causes a significant emissions increase. The rules require IDEM to review and approve unlisted projects; therefore, a fee to complete the review is justified. There are no fees associated with the significant permit modification used to add the applicable requirements for the pollution control project exclusion to the Part 70 permit. There are no fees associated with the minor permit modification to add the applicable requirements for a listed pollution control project to the Part 70 permit.

Air quality analysis

Comment: We appreciate IDEM's decision to adopt the federal pollution control project exclusion provisions, however, we still believe it is necessary to define what the requirements are for

conducting an air quality analysis for a pollution control project, as the requirements are not defined in the rule. (INCMA)

Response: IDEM based the proposed provisions on the federal rules. IDEM agrees that a clarification can be provided for attainment areas, and has therefore clarified, in 326 IAC 2-2.3-1(d)(5), that the required air quality impact analysis shall be performed in accordance with the provisions of 326 IAC 2-2-4 and 326 IAC 2-2-5. The federal requirements for state implementation plans have never specified the procedures to follow related to the air quality analysis for major new source review in nonattainment areas, and the revisions to the federal rules issued on December 31, 2002 did not include specific procedures either. For implementation purposes, in lieu of an air quality analysis, the applicant of a pollution control project would be required to offset significant collateral emissions increases of a nonattainment pollutant. IDEM will not recommend any changes to the nonattainment pollution control project provisions at this time since the federal rules are not specific.

Pollution prevention opportunities

Comment: We believe there may be opportunities to further pollution prevention efforts in the assessment of pollution prevention projects for determination of environmental benefits. Currently, this review limits the review to air emissions. An NSR review of pollution prevention projects should take into account reductions in air emissions, pollutant levels in and the quantity of wastewater generated and discharged as well as volumes and toxicity of solid waste streams. A project with minimal benefits in air quality could have significant environmental benefits in the areas of water and land, still making it a beneficial pollution prevention project that should be eligible for the benefits afforded by the revised NSR rules. Should this not be allowed by the federal NSR rule, we would like to see IDEM discuss this issue with U.S. EPA in an effort to make further progress on this issue. (PPP)

Response: The U.S. EPA clarified that non-air pollution impacts will not be considered in the "environmentally beneficial" determination in Section VI.B.2.b. on page 80235 (67 FR 80235) and section VI.B.2.g. on page 80236 (67 FR 80236) of the preamble in the December 31, 2002 *Federal Register* finalizing the major new source review rule revisions. Therefore, IDEM has not included a multi-media analysis in the requirements for the environmental benefit analysis for a pollution control project being evaluated for the exclusion in the draft rule for preliminary adoption. However, IDEM will continue to work with the public and U.S. EPA regarding projects with multi-media benefits. The pollution control project exclusion is not necessary if the project does not result in a significant increase in emissions of a collateral pollutant.

Collateral pollutants

Comment: In 326 IAC 2-2.3-1(d)(4), the requirement to minimize collateral pollutants is overly broad in that it could be misunderstood to attempt to regulate pollutants in other media that are

outside the authority of the Air Pollution Control Board and even other air emissions for which IDEM does not specifically have regulatory authority. We recommend this language be clarified to limit the minimization of emissions of collateral pollutants to regulated NSR air pollutants. The language should be clarified as follows:

"...and in a way as to minimize, ... strategy, emissions of collateral **regulated NSR air** pollutants."

(NIPSCO)

Comment: In 326 IAC 2-3.3-1(d)(4) and 326 IAC 2-2.3-1(g)(1), for consistency, the language should be modified as follows:

"...and in a way as to minimize, ... strategy, emissions of collateral **regulated NSR air** pollutants."

(NIPSCO)

Response: The federal rules at 40 CFR 51.165(e)(3)(iv), 40 CFR 51.166(v)(3)(iv), and 40 CFR 52.21(z)(3)(iv) do not use the phrase "regulated NSR air" in between "collateral" and "pollutants". Since this is a certification statement, IDEM will not change the rule language from the federal version. A discussion at Section VI.A. on page 80232 (67 FR 80232) of the preamble in the December 31, 2002 *Federal Register* finalizing the major NSR rule revisions clarifies that U.S. EPA is concerned with air pollutants versus other media. In addition, pollutants other than regulated NSR air pollutants do not trigger major new source review and the need for an exclusion from major new source review.

Plantwide Applicability Limits

Prohibit emission increases

Comment: We believe if IDEM proceeds with a PAL, the rule should prohibit emission increases and that the rules should require revocation of the PAL if the source is found to be in violation of the PAL. The rules should also require that emissions decrease over time (a declining cap) to ensure progress is made towards cleaner air. We appreciate and support IDEM's position that PAL determinations will be subject to public review. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM agrees that PAL determinations should be subject to public review, but believes that PALs can be environmentally beneficial even without requiring a declining cap. A PAL is generally more restrictive than the current requirements because emissions are capped regardless of future increases in production and because under the current rule, a source can be modified numerous times with each modification increasing emissions by just less than a significant amount. The PAL provisions will limit the increase in actual emissions to the baseline actual emissions plus a one time addition of the significant level for a ten year period. The language in 326 IAC 2-2.4-11 and 326 IAC 2-3.4-11 defines the provisions the source must follow in order to increase a PAL emission limitation.

IDEM believes the PAL rules provide sufficient review and compliance measures to assure there is not an increase in emissions that does not go through the appropriate modification procedures.

Allocation of emissions upon termination

Comment: While we agree that IDEM should retain discretion to make a fair and equitable allocation of the emissions under a PAL upon termination, we view the "sham PAL" scenario described at the September 10, 2003, public meeting as highly unlikely, given the investment that is required to develop a PAL. We also believe that sources will legitimately rely on their ability to make changes under the PAL and that they should not be penalized if a valid reason for early termination arises. We agree with IDEM that any source proposing to terminate a PAL should propose how the emissions should be allocated. IDEM's rules should provide that, as long as the source's proposal is reasonable and does not represent circumvention of the rules, it should be adopted in the new permit terminating the PAL. (CASE) (ALCOA)

Comment: We are concerned with IDEM's proposed treatment of a PAL upon termination. We think that when a PAL expires, the PAL limit should continue to be an enforceable plantwide limit, but that it would no longer serve the purpose of being the threshold for NSR. In this way, the plantwide limit would continue to serve its purpose of limiting emissions without creating new significant constraints that would arise with the desegregation of that limit. While the PAL cap would remain in effect, just as plantwide synthetic minor limits do at non-PAL facilities, changes after the PAL expires would need to be considered under the conventional NSR applicability criteria. In effect, the PAL would become a simple facility-wide limit. Under IDEM's draft NSR rules, companies with a terminated PAL are to continue to operate under the PAL limit until a revised permit is issued. We recommend that sources with terminated PALs be required to continue to demonstrate compliance with the facility-wide limit.

If IDEM believes that such an approach is not feasible for certain PAL sources, we recommend changes to its draft approach. Specifically, IDEM should not reallocate PAL emissions based on emission limits that were eliminated by a PAL. As U.S. EPA pointed out in the final NSR reform rules, the plant may have made changes under the PAL that would make it difficult or impossible to assign the old limits to the current equipment or meet the old limits. We recommend that the reallocation of a PAL begin with a proposal from the PAL owner. As long as the proposal from the PAL owner is practically enforceable and demonstrates that the overall PAL emissions limit is met, then IDEM should approve that proposal.

We are concerned that the lack of certainty regarding the treatment of PALs when they are terminated or revoked would make this valuable NSR reform measure too risky for most companies to use. A company considering a PAL needs to know with some certainty that, when a PAL is terminated, its facility will not be put into a position of noncompliance due to an unachievable reallocation of the PAL. (DCC)

Response: The draft rule does not penalize a source for terminating its PAL. In fact, it is considerably more flexible than the federal rule by allowing a source to terminate prior to the ten year expiration. IDEM added this flexibility to assure that sources would have a way out of the PAL, unlike the federal rules which lock the source into a ten year limitation. The termination procedures that IDEM created closely follow the expiration procedures as stated in the rules. IDEM does not believe this added flexibility has created a lack in certainty. As with the federal expiration procedures, the emissions will be reallocated per the source's proposal which will be reviewed by IDEM and the public. If a source provides a reasonable proposal for allocating the emissions, IDEM will approve the termination of the PAL.

Discretion retained

Comment: Under 326 IAC 2-2.4-1(b), it states that the department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of the rule. IDEM has not used "shall" in the language. Is IDEM retaining discretion to deny a PAL even if a source meets the requirements? If so, under what circumstances could a PAL be denied even if the source complied with the requirements? (INCMA)

Response: A PAL may not be the right program for everyone. IDEM reserves the authority to deny the PAL if the compliance history of the source is such that it does not seem likely that they will be able to comply with the PAL requirements or if there are other considerations indicating that a PAL is not workable or suitable for the source.

Potential to emit

Comment: In the definition of PTE under 326 IAC 2-2.4-2(k), "secondary emissions do not count in determining the potential to emit of a source". Secondary emissions are not defined. What does IDEM mean by "secondary emissions?" (INCMA)

Response: "Secondary emissions" are defined in 326 IAC 2-2-1(ww) and generally refer to emissions that would occur as a result of the construction activity, but do not come from the constructed facility itself (for example, increases in vehicle emissions). The definitions section at 326 IAC 2-2.4-2 (a) indicates that a term that is not defined in 326 IAC 2-2.4-2 shall have the meaning provided in 326 IAC 2-2-1.

Startup, shutdown, and malfunction emissions

Comment: This requires that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions. It does not include the language "if quantifiable".

What protocol has IDEM provided to U.S. EPA for sources to enable them to make this compliance determination? (INCMA)

Response: U.S. EPA has indicated that use of the phrase "to the extent quantifiable" would not be approved into the SIP. They agree that it may not always be possible for a source to quantify these emissions, but prefer that this be handled on a case-by-case basis in permitting, rather than in the rule. To assure that the rules will be approved into the SIP, IDEM has removed the phrase "to the extent quantifiable" from the startup, shutdown, malfunction portion of 326 IAC 2-2-1(e)(1)(A), 326 IAC 2-2-1(e)(2)(A), 326 IAC 2-3-1(d)(1)(A), and 326 IAC 2-3-1(d)(2)(A).